THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of	:
	: Examiner: I. Chowdhury
Steven Gary KENDREW et al.	:
	: Group Art Unit: 1652
Application No. 10/580,781	:
	: Atty Docket No.: 0380-P04094US00
Filing Date: May 26, 2006	:
	: Confirmation No.: 5863
For: ERYTHROMYCINS AND PROCESS FOR THEIR PREPARATION	:

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RESPONSE TO RESTRICTION REQUIREMENT

Dear Sir:

Restriction is required in the above-identified application due to alleged lack of unity of invention. According to the examiner, the current pending claims are directed to two (2) separate patentably distinct inventions, as set forth at page 2 of the June 13, 2008 Official Action.

For the reasons set forth below, applicants traverse and request reconsideration of this restriction requirement.

The assertion of patentable distinction between Groups I and II is plainly improver for failure to comply with the relevant provisions of the Manual of Patent Examining Procedure (MPEP) pertaining to unity of invention determinations.

The present application was filed under 35 USC §371 as a U.S. national stage application under the Patent Cooperation Treaty. As stated in §1893.03(d) of the MPEP:

> The principles of unity of invention are used to determine the types of claimed subject matter and the combinations of claims to difference categories of invention that are permitted to be included in a single international or national stage patent application. The basic principle is that an application should relate to only one invention or, if there is more than one invention, that applicant would have a right to include in a single application only those inventions which are so linked as to form a single general inventive concept.

> A group of inventions is considered linked to form a single general inventive concept where there is a technical relationship among the inventions that involves at least one common or corresponding special technical feature. The expression special technical features is defined as meaning those technical features that define the contribution which each claimed invention, considered as a whole, makes over the prior art...

It is expressly provided in 37 CFR §1.475 a national application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn to a product and a process adopted for the manufacture of said product. Claims 1-37 are believed to satisfy this condition.

Given that the June 13, 2008 Official Action fails to comply with established US PTO restriction/unity of invention practice, it is respectfully submitted that this requirement should be reconsidered and withdrawn.

In order to be fully responsive to the above-mentioned requirement, applicants provisionally elect, with traverse, the subject matter of Group I, i.e., method claims 1-31, for examination in this application. Claims 1-31 are believed to read on the elected subject matter.

Applicants' election in response to the present restriction requirement is without prejudice to their right to file one or more continuing applications, as provided in 35 SUC §121, on the subject matter of any claim(s) finally held withdrawn from consideration in this application.

It is noted that a shortened statutory response period of one (1) month was set in the June 13, 2008 Official Action. The initial response period, therefore, is due to expire July 14, 2008 (as July 13 fell on a Sunday). The present Response to Restriction Requirement is being filed before the expiration of the initial response period.

Early and favorable action on the merits of this application is respectfully requested.

Respectfully submitted,

DANN DORFMAN HERRELL and SKILLMAN, P.C.
Attorneys for Applicant

By _____
Patrick J. Hagan
Registration No. 27,643

Customer Number 00110
Telephone: (215) 563-4100
Facsimile: (215) 563-4044
Email: phagan@ddhs.com